

What Is ADR?

Alternative Dispute Resolution (ADR) refers to a variety of dispute resolution techniques that involve the introduction of a neutral third party into a dispute. The "neutral" can play a variety of roles, including facilitating discussions, providing parties with a "reality check" on the merits and value of their claims, assisting with creative problem solving, and writing agreements that reflect the needs of the parties. The most familiar ADR processes are mediation and arbitration, which date back to the early 1900s. Some ADR techniques employ an interest-based approach that is often a more constructive alternative to traditional, adversarial processes.

In most ADR techniques, one of the main roles served by the "neutral" is to help make the process of negotiating more effective and efficient. Negotiating is the process by which two or more individuals discuss an issue, including differences over an issue, and attempt to reach a resolution. Sometimes an ADR neutral assists the negotiations by providing an opinion about the dispute; at other times, the neutral may act as a facilitator without expressing opinions about the dispute.

The following are some of the more common ADR techniques:

Arbitration - An ADR process in which a third-party decision-maker, selected by the parties, conducts an abbreviated process of information exchange, presides over a mini hearing, and renders a decision. Arbitration may be binding or nonbinding.

Conciliation - A process in which a neutral third party independently communicates with the parties either to improve relations, resolve a dispute, or pave the way for some other process, e.g., mediation.

Mediation - An interest based ADR process in which a third party neutral (the mediator) meets with two or more parties who have a conflict, facilitates discussions, and assists the parties in reaching a mutual resolution of their differences. The mediator does not have decision-making authority; resolution rests with the parties.

Fact Finding - A process in which a third party neutral finds facts to assist some other process such as negotiation, mediation or adjudication. Fact finding is often used in the labor-management context or multi-party/multi interests community disputes, e.g., airport expansion. A fact-finder may make findings public with the consent of the parties, or the findings or recommendations may remain confidential by the parties' agreement.

Neutral Evaluation - A process in which an expert neutral fact finder considers the relative merits of the parties' cases. The parties generally provide the highlights of their respective positions in an informal presentation to the neutral who submits a non-binding objective evaluation of the case to the parties. This often results in more productive future negotiations.

Mini-trial - An abbreviated presentation of evidence before the major decision makers for the parties who have the authority to settle the case and a third party neutral who presides over the minitrial, engages the parties in litigation risk assessment, and facilitates settlement discussions. Following the summarized presentation of the evidence and a question period, the decision makers meet, with or without the neutral, to negotiate a settlement. Frequently, the neutral will serve as a mediator during the negotiation phase or be asked to offer an advisory opinion on the potential court outcome, to guide the negotiators. This process allows the parties to engage in an information exchange that provides an opportunity to hear the strengths and weaknesses of one's own case as well as the cases of the other parties involved, before negotiating the matter.

Ombudsperson - The ombudsperson is appointed by an agency or institution to investigate complaints and either prevent disputes or facilitate their resolution. The ombudsperson may use various ADR mechanisms such as fact-finding or mediation in the process of resolving disputes brought to his or her attention. The individual should be independent, highly regarded, and trusted within the organization.

Peer Review - An ADR process in which a workplace dispute is presented to a panel of employees and managers for a binding or non-binding decision. Panel members are skilled in handling sensitive issues.

Partnering - A process in which the parties, often government and industry, agree in advance how they will interact and resolve disputes during the course of a contract with the primary objective of facilitating improved contract performance through enhanced communications.